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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of

DANNY LYNN GAMEL and RUDY
MICHAEL OLMOs,

Respondents.

FPPC No.: 99/193

OAH No.: N2001020159

MOTION TO STRIKE IN-PART
RESPONDENT'S BRIEF FOLLOWING
REMAND BY SUPERIOR COURT

Commission Meeting Date: October 2, 2003

The Enforcement Division makes this motion to strike in response to Rudy Michael Olmos' Brief Following Remand by the Superior Court. On September 17, 2003, Respondent Olmos filed an 18-page brief that was two days late, and that exceeded the five-page limitation established by Executive Director Mark Krausse. In his brief, Respondent Olmos spends ten pages summarizing all of the pleadings and evidence submitted in the underlying administrative action, including eight exhibits and the testimony of 11 witnesses, and makes several references to the transcript of the hearing. (Respondent's Brief pp. 3-13.) For the reasons set forth below, the Enforcement Division hereby moves to strike the pages in Respondent's brief that summarize and characterize the evidence presented in the underlying hearing.

1 In an administrative hearing, the administrative law judge ("ALJ") must do two things—make a
2 determination regarding liability, and make a determination regarding an appropriate penalty. The
3 parties in a hearing are therefore required to present evidence regarding liability, and the imposition of
4 an appropriate penalty. Once both determinations are made by the ALJ, the Commission may adopt or
5 reject those determinations as set forth in the ALJ's proposed decision. In this case, the superior court
6 has ordered the Commission to reassess the penalty imposed upon Respondent Olmos, but has upheld
7 the factual and legal findings made against Respondent regarding liability.

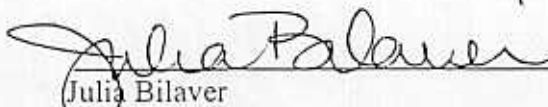
8 In reassessing the penalty amount, it will be necessary for the Commission to look at the record.
9 It is the position of the Enforcement Division that the "record," for purposes of this proceeding, refers to
10 the factual findings of the ALJ, and not the entire transcript of the underlying administrative hearing.
11 Indeed, the Commission itself does not presently have the transcript of the hearing before it to verify the
12 information in Respondent's brief. Moreover, the briefing schedule established by the Executive
13 Director presupposes that the only records before the Commission are the ALJ decision as adopted by
14 the Commission, and the order of the superior court. Specifically, the Executive Director directed both
15 parties to submit a response that was no longer than five pages. As illustrated by Respondent's lengthy
16 brief, a five page document does not permit either side to adequately address any other record other than
17 the ALJ decision and the order of the superior court. On that basis alone, we request that the
18 Commission to strike those pages of Respondent's brief that summarize and reference the evidence set
19 forth in the transcript of the underlying hearing.

20 Furthermore, the inclusion of the transcript in the record would needlessly protract this
21 proceeding. The Commission is required to reconsider a single legal issue that the superior court held
22 was not adequately addressed in the ALJ decision. This procedure should not be used by Respondent as
23 an invitation to open up the entire case, and reargue the evidence presented by both parties. The factual
24 findings made by the ALJ not only support the determination of the ALJ regarding Respondent's
25 liability in this case, but also serves as the basis for any penalty that Commission deems appropriate.

26 Accordingly, the Enforcement Division respectfully requests that the Commission strike the
27 pages in Respondent's brief that make any reference to a document or record other than the ALJ
28 decision and the order of the superior court.

Dated: 9/23/03

Respectfully submitted,



Julia Bilaver

Commission Counsel, Enforcement Division